



California Fair Political Practices Commission

November 30, 1987

Lance H. Olson
Olson, Connelly & Hagel
431 J Street, Fourth Floor
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-87-266

Dear Mr. Olson:

You have requested advice on behalf of the Harry S. Truman Club, a political organization, regarding its filing responsibilities under the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. Have candidates received a reportable contribution when they use information from the Truman Club's computerized data files?

2. If the answer to question number one is "yes," is the value of the contribution determined by the difference between a preferential rate and a standard rate for access services which is paid by candidates who are allowed to use the Truman Club's data files?

3. In addition to potential contributions in question number two, must development and maintenance costs for the data file be included in determining the value of contributions of the use of the data file which candidates receive from the Truman Club?

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

CONCLUSIONS

1. Candidates who use data files owned by the Truman Club have received non-monetary contributions which are reportable on their campaign statements. The value of the non-monetary contribution is the "fair market value," i.e., whatever it would cost the candidate to purchase the data files on the open market.

2. Candidates who pay a preferential rate for use of computerized data files owned by the Truman Club have received a contribution from the Club. The difference between the standard fee and the discounted fee is the value of the contribution.

3. If development and maintenance costs are included in the computer consulting service's standard fee for one-time users, then it would be unnecessary to include the estimated pro-rata share of these costs in calculating contributions to candidates and committees. However, if the standard fee does not fully account for the development and maintenance costs incurred by the Truman Club, then those additional expenses should be included in calculating the value of the contribution. Of course, costs of providing and using the Truman Club's data base which are for the Club's internal purposes, should not be included in valuing the contribution.

FACTS

The Harry S. Truman Club (the "Truman Club") is a general purpose recipient committee. (Section 82013(a).) It is organized primarily to make political contributions to Democratic candidates for local and state public office.

An agreement has been made between a computer consulting firm and the Truman Club to develop and maintain a voter information data base. The expected life of the contract is 10 years. The Truman Club pays for development and annual maintenance costs of the data file, and has sole ownership rights to its use.

Approximately 30 percent of the use of the data files will be for internal organization purposes of the Truman Club. The remaining 70-percent usage will be by candidates who are endorsed by the Truman Club and by voter registration and get-out-the-vote committees.

The computer consulting firm has a two-level rate schedule for determining charges for services to access data files. The lower rate is charged to clients for access to and analysis of a data base which the clients already pay the firm to maintain. A higher "standard" rate is charged to clients who do not maintain a data base with the firm. These higher fees are designed to recover costs associated with one-time users.

The Truman Club intends to make the data file available to candidates that the Club endorses. The fees charged to provide services in accessing the data file would be at a preferential rate for candidates endorsed by the Truman Club.

ANALYSIS

In reviewing the facts presented in your letter, it is clear that your client, the Truman Club, intends to contribute something of value to candidates it has endorsed for public office. In this instance, the value is a computerized data base of voters. Such information would be a valuable resource to candidates in conducting their campaigns.

A contribution is a payment made for political purposes. (Section 82015 and Regulation 18215(a).) A payment includes "...services or anything of value, whether tangible or intangible." (Section 82044.)

Making the Truman Club's computerized data file available to the Club's endorsed candidates, without charging the market value of the information, is a contribution for political purposes. (Regulation 18215(a).) Therefore, there are only two questions to be addressed further: (1) what costs are to be included in determining the value of the Club's contribution, and (2) how is the cost of providing the contribution to be divided among endorsed candidates who take advantage of the nonmonetary contribution?

The standard for valuing nonmonetary contributions to candidates or to committees is explicit. "Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value...." (Section 82025.5)

The Truman Club wants to provide a nonmonetary contribution to candidates or committees in the form of a discounted price pursuant to a contractual agreement which the Club has made with a computer services vendor. Because the computer consulting firm has a standard price for one-time users, which includes some calculation for development costs, the firm's standard price should be used for purposes of valuing the Truman Club's contribution to candidates and committees. The difference between the standard price for one-time users and the fees actually paid by candidates or committees is the amount which should be reported as a contribution by the Truman Club on its campaign statements. Candidates and committees which receive the Truman Club's nonmonetary contribution of access to the computer data base, should report the same value on their disclosure statements.

If development and maintenance costs are included in the computer consulting service's standard fee for one-time users, then it would be unnecessary to include the estimated pro-rata share of these costs in calculating contributions to candidates and committees. However, if the standard fee does not fully account for the development and maintenance costs incurred by the Truman Club, then those additional expenses should be included in calculating the value of the contribution. Of course, costs of providing and using the Truman Club's data base which are for the Club's internal purposes, should not be included in valuing the contribution.

If you have any questions regarding the advice in this letter, please call me at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel

Bruce W. Robeck

By: Bruce W. Robeck
Political Reform Consultant

DMG:BWR:kmt

LAW OFFICES OF

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431 J STREET, FOURTH FLOOR

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TELEPHONE (916) 442-2952

LANCE H. OLSON

OF COUNSEL

LLOYD G. CONNELLY, Member

California State Legislature

OCT 23 3 18 PM '87

October 22, 1987

Ms. Diane Griffiths
Chief, Legal Division
Fair Political Practices Commission
428 J Street
Sacramento, California 95814

RE: Opinion Request

Dear Ms. Griffiths:

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The Truman Club is a general purpose committee formed pursuant to Government Code §82013(a). The principal purpose of the Truman Club is to make campaign contributions to Democratic candidates for local and State public office.

Recently the Truman Club entered into an agreement (hereafter "Agreement") with a computer consulting firm (hereafter "firm") for the development of a voter database for Sacramento County. The database would contain basic voter information including the following elements:

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| 1) Name | 4) Age | 7) Elections Voted In |
| 2) Address | 5) Sex | 8) Rent vs. Own |
| 3) Phone Number | 6) Party Affiliation | |

The purpose of the database is twofold:

1) Provide to the Truman Club a list of potential members and provide accurate lists of involved Democrats to invite to its events (forums, dinners, etc.); and

2) Make available to Truman Club endorsed candidates and voter registration and get out the vote committees database services through the computer consulting firm.

The Truman Club estimates that 30% of the database will be used for the former purpose and 70% for the latter.

Ms. Diane Griffiths
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The Agreement, is for five years with an option to renew. The Truman Club and firm contemplate renewing the Agreement for an additional 5 years. The Agreement also calls for payment by the Truman Club to the firm for the initial development of the database. The Truman Club is also responsible for the cost of annual update performed by the firm.

The database will be an accurate and up-to-date historic profile of a voters behavioral patterns and demographic information. The database would be the property of the Truman Club and cannot be sold or given to anyone without the Truman Club's authorization.

Under the terms of the agreement Truman Club endorsed candidates are permitted access to the database. However, these candidates must pay the firm directly for any products (e.g., gum mailing labels; walking mailing and phone lists; cross tabulated printouts; magnetic media products, etc) they obtain as a result of their access. The price for the products is consistent with the firm's charges for similar products sold to other clients who pay to maintain databases at the firm.

For clients who do not maintain databases, the prices charged for products are higher. This higher price is the result of additional costs the firm incurs in creating a particular database to meet the client's needs.

By way of example, a one-time client who requested a voter list for a particular city council district that included county assessor information would pay a higher fee than a Truman Club endorsed candidate who requested the same list. The reason being that the Truman Club database would be up-to-date and already merged with the assessor tape. Whereas the one-time client would have to pay at least a portion of the cost of recreating the same database.

Several questions are raised from the above facts.

1) Does the fact the Truman Club endorsed candidates pay a lower rate for products than clients who do not maintain a database constitute an in-kind contribution?

2) If yes, what is the value of the in-kind contribution?

Assuming an affirmative answer, the Truman Club believes that the value would be the difference between what an endorsed candidate pays and what other clients pay for the same product.

Ms. Diane Griffiths
Page Three

3) Assuming you conclude in answering question one that there is an in-kind contribution has the Truman Club made an additional in-kind contribution to an endorsed candidate who purchases products of the database developed by the firm on behalf of the Truman Club as a result of the payment of the development and update costs.

4) If yes, what is the value of the in-kind contribution?

Because the firm would factor in the development and update costs in establishing the rate for clients who do not maintain a database the Truman Club believes that the answer to question three should be no. But if you disagree the Truman Club would like to suggest a method of valuation. Specifically, the Truman Club would like to first exclude from the development and update costs that portion attributable to Truman Club in-house needs. Second, the Truman Club proposes prorating the development and annual costs over the number of candidates who are projected to use the database over the expected term of the Agreement - ten years. Finally, the Truman Club desires to value only the prorata share of a particular candidate's use of the database.

By way of example assume that Truman Club has endorsed Ms. Doe's candidacy for the Sacramento County Board of Supervisors. Ms. Doe purchases products of the database directly from the firm for the supervisorial district for which she is a candidate. The Truman Club would value its in-kind contribution by first taking 70% of the development and update costs. Then the Truman Club would prorate this amount among the projected candidates who will use the database. Finally, it would take a percentage of this figure based on the percentage of the database she accessed (in this case whatever percentage the Supervisorial district was to the county wide database).

Please confirm whether this method is acceptable and, if not, what alternative method you would suggest.

Very truly yours,

OLSON, CONNELLY & HAGEL

LANCE H. OLSON

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Very truly yours,

OLSON, CONNELLY & HAGEL

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California Fair Political Practices Commission

October 27, 1987

Lance Olson
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431 J Street, Fourth Floor
Sacramento, CA 95814

Re: 87-266

Dear Mr. Olson:

Your letter requesting advice under the Political Reform Act was received on October 23, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Jeanne Pritchard".

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh